

ESTTA Tracking number: **ESTTA394714**

Filing date: **02/23/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Excelled Sheepskin & Leather Coat Corp.
Granted to Date of previous extension	02/23/2011
Address	1400 Broadway New York, NY 10018 UNITED STATES

Attorney information	Michael A. Grow Arent Fox LLP 1050 Connecticut Avenue, NW Washington, DC 20036 UNITED STATES henrye@arentfox.com, grow.michael@arentfox.com, TMDocket@arentfox.com Phone:202 857 6389
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Applicant Information

Application No	77885085	Publication date	10/26/2010
Opposition Filing Date	02/23/2011	Opposition Period Ends	02/23/2011
Applicant	Dittmeyer, Terrie A 180 Elk Valley Drive Evergreen, CO 80439 UNITED STATES		

Goods/Services Affected by Opposition


Class 025. All goods and services in the class are opposed, namely: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms


Grounds for Opposition


Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3346559	Application Date	11/15/2004
Registration Date	12/04/2007	Foreign Priority Date	NONE

Word Mark	ROGUE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1999/12/01 First Use In Commerce: 1999/12/01 men's, ladies' and children's clothing, namely, coats, jackets, vests, shirts and pants

U.S. Registration No.	2790074	Application Date	04/19/2000
Registration Date	12/09/2003	Foreign Priority Date	NONE
Word Mark	ROGUE LEATHER BY REILLY OLMES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2000/01/10 First Use In Commerce: 2000/01/10 Men's, women's and children's clothing made in whole or in substantial part of leather, namely, coats, vests, shirts and pants		

U.S. Registration No.	2815985	Application Date	04/19/2000
Registration Date	02/24/2004	Foreign Priority Date	NONE
Word Mark	REILLY OLMES ROGUE LEATHER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2000/02/18 First Use In Commerce: 2000/02/18 Men's, women's and children's clothing made in whole or in substantial part of leather, namely, coats, vests, shirts and pants		

Attachments	76620735#TMSN.gif (1 page)(bytes) 76030034#TMSN.gif (1 page)(bytes) Dittmeyer opp.pdf (5 pages)(238367 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Michael A. Grow/
Name	Michael A. Grow
Date	02/23/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application No. 77885085, ROGUE WOLF

EXCELLED SHEEPSKIN & LEATHER COAT CORP.	:	
	:	
Opposer	:	
	:	
v.	:	Opp. No. _____
	:	
TERRIE A. DITTMAYER	:	
	:	
Applicant	:	

NOTICE OF OPPOSITION

Opposer Excelled Sheepskin & Leather Coat Corp. (“Opposer”) believes that it will be damaged by the registration of the above-identified mark in Class 25 and hereby opposes the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for the opposition, Opposer alleges as follows:

1. Opposer is the owner of all rights, title and interest in and to a family of marks containing the word ROGUE for clothing (“Opposer’s Marks”).
2. Opposer’s Marks have become well known through extensive use and advertising, and they have become highly valuable symbols of Opposer’s goodwill.
3. Since long prior to any first use date or filing date that Applicant may allege, Opposer has been using the mark ROGUE in connection with the advertising and sale of clothing.
4. The Patent and Trademark Office has recognized Opposer’s exclusive right to use its marks by issuing the following registrations:

Reg. No. 3346559, ROGUE, issued December 4, 2007

Registration No. 2790074, ROGUE LEATHER BY REILLY OLMES, issued
December 9, 2003

Reg. No. 2815985, REILLY OLMES ROGUE LEATHER, dated February 24, 2004

5. Opposer's registrations are valid and they provide *prima facie* evidence of Opposer's ownership of, and exclusive right to use, Opposer's Marks in commerce. Registration No. 2790074 is incontestable and it provides conclusive evidence of Opposer's ownership of the mark, and of its exclusive right to use the mark in commerce in connection with the goods listed therein.

6. Opposer has developed a well known business reputation throughout the United States and Opposer's Marks have been and continue to be widely used and publicized.

7. Notwithstanding Opposer's prior established rights in its Marks, Applicant filed the above referenced application for registration of the mark ROGUE WOLF for various goods, including athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms in International Class 25.

8. Opposer's Marks have been used continuously on or in connection with its goods in interstate commerce since long prior to Applicant's filing date.

9. Upon information and belief, Applicant has made no use of its alleged mark in commerce prior to the filing date of its application.

LIKELIHOOD OF CONFUSION - §2(d)

10. The mark that Applicant seeks to register is identical to or so closely resembles Opposer's Marks that the use and registration thereof is likely to cause confusion, mistake and deception as to the source or origin of Applicant's goods and will thereby injure and damage Opposer and the goodwill and reputation symbolized by Opposer's Marks.

11. The goods of Applicant are so closely related to the goods of Opposer that the public is likely to be confused, to be deceived, and to assume erroneously that Applicant's goods

are those of Opposer or that Applicant is in some way connected with or sponsored by or affiliated with Opposer, all to Opposer's irreparable damage.

12. Likelihood of confusion is further enhanced by the fact that Applicant intends to offer its products to the same prospective customers who purchase Opposer's clothing products and through the same trade channels in which Opposer's products are sold.

13. On information and belief, Applicant adopted its alleged mark with an intent to cause confusion by trading on the goodwill associated with Opposer's Marks, and therefore it may be presumed that customers will in fact be confused.

14. Applicant is not affiliated or connected with, nor is it approved, endorsed or sponsored by, Opposer.

15. Similarly, Opposer has not approved any goods sold or intended for sale by Applicant under its alleged mark, nor has Opposer granted Applicant permission to use said mark alone or in combination with any design.

DECEPTION/FALSE SUGGESTION OF CONNECTION - §2(a)

16. Applicant's alleged mark so closely resembles Opposer's Marks that it is likely to cause deception in violation of Section 2(a) of the Trademark Act because the mark misdescribes the nature or origin of the goods. Purchasers are likely to believe that the misdescription actually describes the nature or origin of the goods, which is likely to materially alter purchasers' decisions to acquire Applicant's goods.

17. Applicant's alleged mark so closely resembles Opposer's Marks that it falsely suggests a connection with Opposer in violation of Section 2(a) of the Trademark Act, because Applicant's alleged mark points uniquely to Opposer, and purchasers will thus assume that goods sold under Applicant's alleged mark are connected with Opposer.

18. If Applicant's alleged mark is used on goods of the type described in its application, Applicant's alleged mark will cause purchasers to refrain from purchasing Opposer's authorized goods based on the mistaken assumption that Opposer is endorsing, attempting to promote, or encouraging the sale of Applicant's goods by permitting Applicant to use said mark.

19. Applicant's mark is deceptive in that it falsely suggests a connection with, or approval by, Opposer.

20. Use and registration by Applicant of its alleged mark will deprive Opposer of the ability to protect its reputation, persona and goodwill.

21. Likelihood of damage to Opposer's goodwill is enhanced by the fact that prospective customers who encounter defects in the quality of Applicant's goods will attribute those defects to Opposer and this will injure Opposer's reputation and goodwill.

22. By reason of the foregoing, Opposer will be damaged by the registration of Applicant's alleged mark and registration should be refused.

WHEREFORE, Opposer prays that this opposition be sustained and that registration be denied.

**EXCELLED SHEEPSKIN & LEATHER COAT
CORP.**

By _____


Michael A. Grow

Alec P. Rosenberg

Arent Fox LLP

1050 Connecticut Avenue, NW

Washington, DC 20036

(202) 857-6000

Attorneys for Opposer

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing is being served upon Applicant Terrie A. Dittmeyer at 180 Elk Valley Drive Evergreen Colorado by first class mail, postage prepaid, on February 23, 2011.

A handwritten signature in black ink, appearing to read "Michael J. Allen", is written over a horizontal line.